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IN THE

Supreme Court Of The United States

OCTOBER TERM, 1989

STATE OF LOUISIANA, *ex rel.* WILLIAM J. GUSTE, JR., ATTORNEY GENERAL OF THE STATE OF LOUISIANA,

APPELLANT,

v.

UNITED STATES OF AMERICA, *et al.*

APPELLEES.

STATE APPENDIX TO MOTION TO DISMISS APPEAL OF WILLIAM J. GUSTE, JR.

JOSEPH J. LEVIN, JR.
CARLA CALOBRISI
PRISCILLA N. HARRIS
Adams, McCullough & Beard
Suite 880
2000 M Street, N.W.
Washington, D.C. 20036-3307
(202) 223-0200

Attorneys for State of Louisiana, *ex rel.* Charles E. "Buddy" Roemer, III, Governor of the State of Louisiana

JOHN N. KENNEDY
Counsel of Record
Special Counsel to the Governor
Office of the Governor
State Capitol, Fourth Floor
P.O. Box 94004
Baton Rouge, LA 70804-9004
(504) 342-7015

Balmar Legal Publishing Division, Washington, D.C., (202) 659-3610

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	CIVIL ACTION
versus	NO. 80-3300
STATE OF LOUISIANA, ET AL	SECTION "A"

[Filed December 29, 1987]

MOTION FOR HEARING

Pursuant to Part V of the 1981 Consent Decree[1] the United States, plaintiff, requests this Court to enter an order maintaining jurisdiction over this litigation, scheduling a hearing in the instant litigation for the purpose of determining whether defendants have fully implemented all provisions of this Decree and are operating the system of public higher education on a unitary basis, preserving all privileges, obligations and rights of the parties hereto.

Part V of the 1981 Consent Decree states in pertinent part:

B. If any party, prior to December 31, 1987, has commenced proceedings either to seek compliance with this Decree, or to seek other relief necessarily implicating this Decree, this Court shall retain jurisdiction over this action until all issues relating to such proceedings have been resolved.

C. On December 31, 1987, this Decree shall terminate automatically and without further formality unless the plaintiff by motion requests this court to conduct a hearing for the purpose of determining whether defendants have fully implemented all provisions of this Decree and are operating the system of public higher education on a unitary basis.

The Memorandum in support of this Motion attached hereto is incorporated herein by reference.

---

[1] Reference here and hereafter to "Consent Decree" refers to the 1982 Addendum to Consent Decree as well as the 1981 Consent Decree.

WHEREFORE, the United States prays that this Court enter an order maintaining jurisdiction over this litigation, scheduling a hearing for the purpose set forth above, and scheduling a status conference for the purpose of assigning a hearing date, and preserving all privileges, obligations and rights of the parties.

Respectfully Submitted,

JOHN VOLZ
United States Attorney

/s/ William F. Baity

William F. Baity
Assistant U.S. Attorney

WM. BRADFORD REYNOLDS
Assistant Attorney General

ROGER B. CLEGG
Deputy Assistant Attorney General

/s/ William F. Bartz (for)

NATHANIEL DOUGLAS
FRANZ R. MARSHALL
ZITA JOHNSON-BETTS
LeVERN M. YOUNGER
Attorneys
Civil Rights Division
U.S. Department of Justice
Washington, D. C. 20530

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	CIVIL ACTION
versus	NO. 80-3300
STATE OF LOUISIANA, ET AL	SECTION "A"

MEMORANDUM IN SUPPORT OF MOTION FOR HEARING

Pursuant to Part V of the 1981 Consent Decree,[2] the United States, plaintiff, requests this Court to enter an order maintaining jurisdiction over this action, scheduling a hearing for the purpose of determining whether defendants have fully implemented all provisions of this Decree and are operating the system of public higher education on a unitary basis, and setting a status conference for the purpose of setting a hearing date, and preserving all privileges, obligations and rights of the parties hereto.

As grounds for the Motion, the United States avers as follows:

1. Part V of the 1981 Consent Decree states in pertinent part:

   B. If any party, prior to December 31, 1987, has commenced proceedings either to seek compliance with this Decree, or to seek other relief necessarily implicating this Decree, this Court shall retain jurisdiction over this action until all issues relating to such proceedings have been resolved.

   C. On December 31, 1987, this Decree shall terminate automatically and without further formality unless the plaintiff by motion requests this Court to conduct a hearing for the purpose of determining whether defendants have fully implemented all provisions of this Decree and are operating the system of public higher education on a unitary basis.

2. Throughout the life of the 1981 Consent Decree the parties have monitored compliance with the Decree and efforts have been made to resolve problems and/or concerns through negotiation.

[2] Reference here and hereafter to "Consent Decree" refers to the 1982 Addendum to Consent Decree as well as the 1981 Consent Decree.

3. It is the evaluation of, *inter alia*, the plaintiff that all of the requirements of the Decree have not been fully and completely met.

4. The plaintiff has communicated to the defendants a description of the unfulfilled requirements.

5. The plaintiff has transmitted a proposal to resolve the remaining issues to the defendants.

6. The plaintiff and defendants have initiated negotiations concerning the plaintiff's proposal and to resolve outstanding issues.

7. While the parties believe that the outstanding issues can be resolved without protracted litigation and extensive consumption of the Court's time, it is required by pertinent provisions of the Consent Decree that the plaintiff file a motion requesting the Court to conduct a hearing as set out above.

WHEREFORE, the United States requests that this Court, for the reasons set out above and int he interest of justice enter an order maintaining jurisdiction over this action and setting a status conference in this matter, and providing for the conduct of a hearing as required by Part V, B and C of the Consent Decree, and preserving all privileges, obligations and rights of the parties.

Respectfully Submitted,

JOHN VOLZ
United States Attorney

/s/ William F. Baity

William F. Baity
Assistant U.S. Attorney

WM. BRADFORD REYNOLDS
Assistant Attorney General

ROGER B. CLEGG
Deputy Assistant Attorney General

/s/ William F. Baity (for)

NATHANIEL DOUGLAS
FRANZ R. MARSHALL
ZITA JOHNSON-BETTS
LeVERN M. YOUNGER
Attorneys
Civil Rights Division
U.S. Department of Justice
Washington, D. C. 20530

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	CIVIL ACTION
versus	NO. 80-3300
STATE OF LOUISIANA, ET AL	SECTION "A"

ORDER

The United States, plaintiff, having requested that this Court enter an order maintaining jurisdiction over this litigation and enter an order to conduct a hearing for the purpose of determining whether defendants have fully implemented all provisions of the 1981 Consent Decree and the 1982 Addendum to Consent Decree and are operating the system of public higher education on a unitary basis, and to assign a date for a status conference for the purpose of setting a hearing date, the same is, for good cause shown, GRANTED.

THEREFORE, jurisdiction over this litigation is maintained, a status conference is hereby set for Monday, February 29, 1988 at 4:45 P.M. to determine a date for the conduct of a hearing for the purpose of determining whether defendants have fully implemented all provisions of the 1981 Consent Decree and the 1982 Addendum to Consent Decree and are operating the system of public higher education on a unitary basis, such hearing date to be set in this matter pursuant to further orders of the court, and all privileges, obligations, and rights of the parties are hereby preserved.

New Orleans, Louisiana, December 29 , 1987.

/s/ Charles Schwartz, Jr.

UNITED STATES DISTRICT JUDGE
Individually and for and on behalf of
Judge John Minor Wisdom and
Judge Veronica D. Wicker

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing United States' Motion for Hearing and Memorandum in Support of Motion for Hearing upon the following counsel by transmitting a copy by first class mail, postage prepaid, addressed as follows:

William J. Guste, Jr.
Attorney General of Louisiana
234 Loyola Building,
7th Floor
New Orleans, Louisiana 70112

William J. Jefferson, Esq.
JEFFERSON, BRYAN,
GRAY & JUPITER
Suite 1850 - Poydras Center
650 Poydras Street
New Orleans,
Louisiana 70130-6101

Robert Kutcher, Esq.
650 Poydras Street
Suite 2500
New Orleans, Louisiana 70130

W. S. McRenzie, Esq.
Taylor, Porter, Brooks
and Phillips
451 Florida Blvd.
Baton Rouge, Louisiana 70801

Thomas N. Todd, Esq.
1 North LaSalle Street
Suite 2250
Chicago, Illinois 60602

Emmanuel Fernandez
Pleasant Hall
Louisiana State University
Baton Rouge, Louisiana 70803

Charles W. Roberts, Esq.
Executive Counsel to the
Governor
4th Floor
State Capitol Building
Baton Rouge, Louisiana 70804

Mack Barham, Esq.
BARHAM & CHURCHILL
400 Lafayette Street
Suite 300
New Orleans, Louisiana 70190

This the 29th day of December, 1987.

JOHN VOLZ
UNITED STATES
ATTORNEY

/s/ William F. Baity

William F. Baity
Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	CIVIL ACTION
versus	NO. 80-3300
STATE OF LOUISIANA, ET AL	SECTION "A"

[Filed December 31, 1987]

MOTION FOR HEARING

Pursuant to Part V of the 1981 Consent Decree[1] the United States, plaintiff, requests this Court to enter an order maintaining jurisdiction over this litigation, scheduling a hearing in the instant litigation for the purpose of determining whether defendants have fully implemented all provisions of this Decree and are operating the system of public higher education on a unitary basis, preserving all privileges, obligations and rights of the parties hereto.

Part V of the 1981 Consent Decree states in pertinent part:

B. If any party, prior to December 31, 1987, has commenced proceedings either to seek compliance with this Decree, or to seek other relief necessarily implicating this Decree, this Court shall retain jurisdiction over this action until all issues relating to such proceedings have been resolved.

C. On December 31, 1987, this Decree shall terminate automatically and without further formality unless the plaintiff by motion requests this court to conduct a hearing for the purpose of determining whether defendants have fully implemented all provisions of this Decree and are operating the system of public higher education on a unitary basis.

The Memorandum in support of this Motion attached hereto is incorporated herein by reference.

---

[1] Reference here and hereafter to "Consent Decree" refers to the 1982 Addendum to Consent Decree as well as the 1981 Consent Decree.

WHEREFORE, the United States prays that this Court enter an order maintaining jurisdiction over this litigation, scheduling a hearing for the purpose set forth above, and scheduling a status conference for the purpose of assigning a hearing date, and preserving all privileges, obligations and rights of the parties.

Respectfully Submitted,

/s/ William J. Jefferson

William J. Jefferson, Esq.
Ethel Sims, Esq.
JEFFERSON, BRYAN, GRAY & JUPITER
Suite 1850, 650 Poydras
New Orleans, LA 70130-6101
(504) 561-8933

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served on all counsel of record properly addressed by depositing same in the United States mail with sufficient postage prepaid on this 31st day of Dec., 1987.

/s/ William J. Jefferson
Attorney of Record

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	CIVIL ACTION
versus	NO. 80-3300
STATE OF LOUISIANA, ET AL	SECTION "A"

MEMORANDUM IN SUPPORT OF MOTION FOR HEARING

Pursuant to Part V of the 1981 Consent Decree,[2] the United States, plaintiff, requests this Court to enter an order maintaining jurisdiction over this action, scheduling a hearing for the purpose of determining whether defendants have fully implemented all provisions of this Decree and are operating the system of public higher education on a unitary basis, and setting a status conference for the purpose of setting a hearing date, and preserving all privileges, obligations and rights of the parties hereto.

As grounds for the Motion, the United States avers as follows:

1. Part V of the 1981 Consent Decree states in pertinent part:

   B. If any party, prior to December 31, 1987, has commenced proceedings either to seek compliance with this Decree, or to seek other relief necessarily implicating this Decree, this Court shall retain jurisdiction over this action until all issues relating to such proceedings have been resolved.

   C. On December 31, 1987, this Decree shall terminate automatically and without further formality unless the plaintiff by motion requests this Court to conduct a hearing for the purpose of determining whether defendants have fully implemented all provisions of this Decree and are operating the system of public higher education on a unitary basis.

2. Although cast as a defendant, the Southern University Board of Supervisors interests are more closely aligned with those of the plaintiff, the United States, in this matter and Southern University was

[2] Reference here and hereafter to "Consent Decree" refers to the 1982 Addendum to Consent Decree as well as the 1981 Consent Decree.

to have been a major beneficiary of enhancement in academic programs and physical facilities.

3. Throughout the life of the 1981 Consent Decree the parties have monitored compliance with the Decree, have regularly complained of the failure of the State and other defendants to comply with the terms of the Consent Decree, and efforts have been made to resolve problems and/or concerns through negotiation.

4. It is the evaluation of, *inter alia*, the defendant that all of the requirements of the Decree have not been fully and completely met. The Consent Decree committed the State and other defendants to enhance predominantly black institutions, and in particular to enhance the institutions of the Southern University System through: (a) strengthening existing academic programs; (b) placing new high demand, high cost programs at Southern; (c) improving its existing capital facilities and constructing new capital facilities; and (d) by increasing financial support to these institutions, among other commitments. In spite of the clear mandates of the decree, its commitment to enhance predominantly black institutions has not been fulfilled, the equal opportunity provisions of the decree have not been met, and the decree has not been otherwise implemented in good faith for these, among other reasons:

i. The defendants have failed to locate all of the new academic programs required by the "Consent Decree" at the various institutions of the Southern University System;

ii. The defendants have not implemented new academic programs in a timely manner, not in accordance with established State policies and other established policies regarding educational quality;

iii. The defendants have failed to fund the new programs at a level to make them viable and capable of attracting students of all races to Southern University;

iv. The defendants have failed to provide increased financial support as is reasonably necessary to fund the requirements of the "Consent Decree", and to provide inflationary increases as required;

v. The defendants have conducted academic program reviews and recommended program eliminations inconsistent with the objective of enhancing predominantly black institutions;

vi. The defendants have not improved Southern's physical plant such that it is comparable to those plants of comparable predominantly white institutions and more than half of the "Consent Decree" capital projects have not been started or completed;

vii. The defendants have failed to meet the racial composition goals for certain of its governing boards;

viii. Equal access goals of the decree are not fulfilled, and Southern has been unable to successfully recruit other race students because of the failure of the State to provide other race scholarships, public relations funds to attract other race students, provide access to other race high school students, and other requirements;

ix. The defendants have failed to provide appropriate funding for developmental education programs and student financial assistance programs as required by the decree; and

x. equal employment goals have not been met at Southern because of the defendants' failure to appropriate funds sufficient to attract other race faculty and staff to Southern and to provide and appropriate academic environment.

5. The plaintiff has communicated to the defendants a description of the unfulfilled requirements.

6. The plaintiff has transmitted a proposal to resolve the remaining issues to the defendants.

7. The plaintiff and defendants have initiated negotiations concerning the plaintiff's proposal and to resolve outstanding issues.

WHEREFORE, the Southern University Board of Supervisors requests that this Court, for the reasons set out above and in the interest of justice enter an order maintaining jurisdiction over this action, and providing for the conduct of a hearing as required by Part V, B and C of the Consent Decree, and preserving all privileges, obligations and rights of the parties.

Respectfully Submitted,

/s/ William J. Jefferson

William J. Jefferson, Esq.
Ethel A. Simms, Esq.
JEFFERSON, BRYAN, GRAY & JUPITER
Suite 1850, 650 Poydras
New Orleans, LA 70130-6101
(504) 561-8933

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	CIVIL ACTION
versus	NO. 80-3300
STATE OF LOUISIANA, ET AL	SECTION "A"

ORDER

The Southern University Board of Supervisors, Defendant, having requested that this Court enter an order maintaining jurisdiction over this litigation and enter an order to conduct a hearing for the purpose of determining whether defendants have fully implemented all provisions of the 1981 Consent Decree and the 1982 Addendum to Consent Decree and are operating the system of public higher education on a unitary basis, and to assign a date for a such hearing in due course, the same is, for good cause shown, GRANTED.

THEREFORE, jurisdiction over this litigation is maintained, a hearing date will be set in due course to determine a date for the conduct of a hearing for the purpose of determining whether defendants have fully implemented all provisions of the 1981 Consent Decree and the 1982 Addendum to Consent Decree and are operating the system of public higher education on a unitary basis, such hearing date to be set in this matter pursuant to further orders of the court, and all privileges, obligations, and rights of the parties are hereby preserved.

New Orleans, Louisiana, December ___, 1987.

_____
UNITED STATES
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing United States' Motion for Hearing and Memorandum in Support of Motion for Hearing upon the following counsel by transmitting a copy by first class mail, postage prepaid, addressed as follows:

U.S. Department of Justice
Wm. Bradford Reynolds
Assistant Attorney General

Roger B. Clegg
Deputy Assistant Attorney General

Nathaniel Douglas
Franz R. Marshall
Zita Johnson-Betts
LeVern M. Younger
Attorneys Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20530

William J. Guste, Jr.
Attorney General of Louisiana
234 Loyola Building, 7th Floor
New Orleans, Louisiana 70112

Robert Kutcher, Esq.
650 Poydras Street
Suite 2500
New Orleans, Louisiana 70130

W. S. McRenzie, Esq.
Taylor, Porter, Brooks
and Phillips
451 Florida Blvd.
Baton Rouge, Louisiana 70801

Thomas N. Todd, Esq.
1 North LaSalle Street
Suite 2250
Chicago, Illinois 60602

Emmanuel Fernandez
Pleasant Hall
Louisiana State University
Baton Rouge, Louisiana 70803

Charles W. Roberts, Esq.
Executive Counsel to the
Governor
4th Floor
State Capitol Building
Baton Rouge, Louisiana 70804

Mack Barham, Esq.
BARHAM & CHURCHILL
400 Lafayette Street Suite 300
New Orleans, Louisiana 70190

This the 31st day of December, 1987.

Respectfully Submitted,

/s/ William J. Jefferson
William J. Jefferson, Esq.
Ethel Simms, Esq.
JEFFERSON, BRYAN, GRAY,
& JUPITER
Suite 1850, 650 Poydras
New Orleans, LA 70130-6101
(504) 561-8933

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	CIVIL ACTION
VERSUS	NO. 80-3300
STATE OF LOUISIANA, LOUISIANA STATE BOARD OF EDUCATION,	DIVISION "A"
ET AL	MAGISTRATE 3

[Filed March 3, 1989]

MOTION TO APPEAR AS AMICUS CURIAE

NOW INTO COURT, through undersigned counsel, comes the Governor's Commission on the Availability of College Education for Qualified Louisiana Youth and moves this Honorable Court for leave to participate in the above-captioned matter in the capacity of *amicus curiae* in order to present the Commission's three-point plan to reform the state's system of higher education and which mover believes will assist this Court in achieving an expeditious solution, in whole or in part, to the issue before the Court.

/s/ Dermot S. McGlinchey

DERMOT S. McGLINCHEY (No. 9317)
McGLINCHEY, STAFFORD, MINTZ, CELLINI & LANG
643 Magazine Street
New Orleans, Louisiana 70130
Telephone: (504) 586-1200
COUNSEL TO THE GOVERNOR'S COMMISSION ON THE AVAILABILITY OF COLLEGE EDUCATION FOR QUALIFIED LOUISIANA YOUTH

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been forwarded to all counsel of record by placing same in the U. S. Mail, postage prepaid and properly addressed on this 3rd day of March, 1989.

/s/ Dermot S. McGlinchey
DERMOT S. McGLINCHEY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	CIVIL ACTION
VERSUS	NO. 80-3300
STATE OF LOUISIANA, LOUISIANA STATE BOARD OF EDUCATION, ET AL	DIVISION "A"
	MAGISTRATE 3

ORDER

CONSIDERING THE FOREGOING MOTION:

IT IS ORDERED, that the Governor's Commission on the Availability of College Education for Qualified Louisiana Youth be granted leave to appear in this matter in the capacity of *amicus curiae* and to present its plan on higher education to the Court.

New Orleans, Louisiana, this ___ day of March, 1989.

_____
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	CIVIL ACTION
VERSUS	NO. 80-3300
STATE OF LOUISIANA, LOUISIANA STATE BOARD OF EDUCATION,	DIVISION A
ET AL	MAGISTRATE 3

MEMORANDUM IN SUPPORT OF MOTION TO APPEAR A AMICUS CURIAE

A party properly appears in the capacity of amicus curiae when that party is "one who, 'not as parties, . . . but, just as any stranger might for the assistance of the court gives information of some matter of law in regard to which the court is doubtful or mistaken.'" *New England Patriots Football Club, Inc. v. University of Colorado*, 592 F.2d 1196, 1198 n.3 (1st Cir. 1979) (citation omitted). As aptly stated by the district court in *Leigh v. Angle*, 535 F.Supp. 418, 420 (N.D. Ill. 1982), "[h]istorically, . . . an *amicus curiae* is an impartial individual who suggests the interpretation and status of the law, gives information concerning it, and whose function is to advise in order that justice may be done, rather than to advocate a point of view so that a cause would be won by one party or another."

The Governor's Commission on the Availability of College Education for Qualified Louisiana Youth [hereinafter "the Commission"] seeks status as *amicus curiae* to assist the Court in resolving a complex matter of public interest vital to the future of the State of Louisiana. The Commission's goals are to "help Louisiana's young people achieve higher levels of education [so that] . . . qualified students [are offered] . . . the opportunity to obtain a college education." *See*, January 10, 1989, Press Release from Governor Buddy Roemer attached as Exhibit A. The Commission, comprised of respected individuals in education and business throughout the state,[1] has been charged with considering the following proposal so that all Louisiana high school students who qualify academically may obtain a college education:

[1] *See Governor's Commission on the Availability of College education for Qualified Louisiana Youth* attached as Exhibit B.

It has been proposed to provide every Louisiana youth who qualifies, but does not have the means, the opportunity to obtain a college education with all the motivation and aspiration that will mean. Achievement of this goal will:

- Create a truly open equal opportunity society for all our citizens by guaranteeing that full participation will in the future depend on individual effort and merit, not on social, economic or racial origins.
- Allow all college bound students to make their college choice unhampered by feelings of academic or economic inadequacy. Cause Louisiana to be the first of fifty states to extend the public education guarantee from 12 to 16 years.
- Allow Louisiana to lead the way to a more competitive America through the full utilization of our most valuable resource, our youth.
- Greatly reduce the high level of high school drop outs by creating a real reason for.the continuance of education for all students.
- Insure that all high school graduates are functionally literate and equipped to enter a meaningful career path whether that involves a job, vo-tech study or college.
- Rejuvenate the state's economy through the creation of an educated work force.
- Correct the inequities of a system of higher education – dependent on the support of all taxpayers – that in fact denies access to a majority of our citizens.
- Enhance the public and private sector support of all phases of education.

See Commission on the Availability of College Education for Qualified Louisiana Youth, "The Proposal" at 1-2 attached as Exhibit B.

The plan under consideration by the Commission was authored by Mr. Patrick F. Taylor, the Chairman of the Commission, and is

widely known as the "Taylor Plan." The Taylor Plan has three elements:

(1) To raise admission standards at four-year state colleges and universities to require completion of 17.5 credits of core curricula study, a 2.5 grade point average, and a score of 18 on the American College Test. These standards would be adopted now to take effect four years hence [1993].

(2) As the need for remedial instruction at four year institutions is reduced by the new standards, these institutions would be allowed to retain the funds saved to assist in the funding of part (3).

(3) To provide a full waiver of tuition and room and board at these four-year institutions to qualified Louisiana students who could not otherwise afford to attend.

The Taylor Plan has received support from all over the state from groups such as the Board of Regents and the Board of Elementary and Secondary Education,[2] the Board of Directors of the Chamber of Commerce[3]; the State Superintendent of Education William Cody; [4] private citizens[5]; James A. Caillier, President of Delgado Community College[6] and The Board of Trustees for State Colleges and Universities.[7]

---

[2] *See Education Board's Endorsed College Guarantee Plan*, The Baton Rouge Morning Advocate, December 16, 1988 attached as Exhibit C and *'Taylor' is the key*, The Times-Picayune/States Item, January 22, 1989, attached as Exhibit D.

[3] *See The Chamber Journal*, February, 1989, attached as Exhibit E

[4] *See Cody Backs Free College Proposal*, The Baton Rouge Morning Advocate, November 21, 1988, as attached as Exhibit F and *Education Chief Endorses Free College Education Idea*, Reveille Louisiana State University, November 22, 1988, attached as Exhibit G.

[5] *See* Letters from attendants at the Alexandria Rotary Club Meeting attached as Exhibit H and the February 17, 1989 letter from a Mr. Paul Forbes to Mr. Taylor who heard of Mr. Taylor's plan by watching television station WYES in New Orleans attached as Exhibit I.

[6] *See* January 19, 1989, letter of Mr. James A. Caillier attached as Exhibit J.

[7] *See* February 27, 1989, letter from J. Larry Crain to Patrick F. Taylor attached as Exhibit K.

It is respectfully submitted that the commission can advance an educational perspective which can materially contribute to the dispute before the Court and that, in the interest of justice, the Commission should have an opportunity to be heard as *amicus curiae*.

Respectfully submitted,

/s/ Dermot S. McGlinchey
DERMOT S. McGLINCHEY (No. 9317)
McGLINCHEY, STAFFORD, MINTZ,
CELLINI & LANG
643 Magazine Street
New Orleans, Louisiana 70130
Telephone: (504) 586-1200
COUNSEL TO THE GOVERNOR'S
COMMISSION ON THE AVAILABILITY
OF COLLEGE EDUCATION FOR
QUALIFIED LOUISIANA YOUTH

higher education system. See *Ayers* v. *Allain*, 674 F. Supp. 1523 (N.D. Miss. 1987), appeal pending, No. 88-4103 (5th Cir.) (argued May 1, 1989).

CONCLUSION

The appeals should be dismissed for lack of jurisdiction under 28 U.S.C. 1253.

Respectfully submitted.

KENNETH W. STARR
Solicitor General
JAMES P. TURNER
Acting Assistant Attorney General
ROGER CLEGG
Deputy Assistant Attorney General
JESSICA DUNSAY SILVER
MARK L. GROSS
Attorneys

DECEMBER 1989

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